

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EVELINE SCHWARZ

Plaintiff,

V.

**TARGET CORPORATION
ARIZONA BEVERAGES USA LLC,
BEVERAGE MARKETNG USA, INC.,
AND GRAPHIC PACKAGING
INTERNATIONAL, LLC**

Defendants.

CIVIL ACTION NO.

JURY

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant Target Corporation, (“Target”) hereby files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removing the above-captioned case to the United States District Court for the Southern District of Texas, Houston Division. The grounds for removal are as follows:

I. Introduction

1. Plaintiff Eveline Schwarz (“Plaintiff” or “Schwarz”), at the time this action was commenced, was, and still is, a resident and a citizen of Texas.

2. Defendant Target, at the time this action was commenced, was, and still is, a resident and citizen of Minnesota.

3. Defendant Arizona Beverages USA LLC (“Arizona”), at the time this action was commenced, was, and still is, a citizen of New York per Plaintiff’s Original Petition. As of the

date of filing this Notice of Removal, Arizona has not been properly joined and served in the suit and thus has not entered an appearance in this suit.

4. Defendant Beverage Marketing USA, Inc. (“BM”), at the time this action was commenced, was, and still is, a citizen of New York. As of the date of filing this Notice of Removal, BM has not entered an appearance in this suit.

5. Defendant Graphic Packaging International, LLC (“Graphic”), at the time this action was commenced, was, and still is, a citizen of Delaware. Graphic has entered an appearance in this suit and consents to the removal as evidenced by Graphic’s Consent to Removal which is being filed concurrently with this Notice of Removal.

6. Plaintiff claims that on or about July 21, 2018, she was shopping in the Target store located at 1100 Lake Woodlands Drive, The Woodlands, Montgomery County, Texas 77380, when the aluminum cans of Arizona Arnold Palmer Lite Half & Half Iced Tea Lemonade fell out of their paperboard packaging and struck her right foot. Plaintiff’s Original Petition at p. 3. Plaintiff contends that she suffered severe injuries to her right foot, namely Reflex Sympathetic Dystrophy Syndrome, as a result of same. *Id.*

7. On or about February 6, 2019, Plaintiff commenced a lawsuit in the 284th Judicial District Court of Montgomery County, Texas, Cause No. 19-02-01886, styled *Eveline Schwarz v. Target Corporation, et. al. Id.* at p. 1. Defendant Target was served on or about March 11, 2019.

8. Plaintiff avers, inter alia, that Target was negligent in failing to properly unload and handle the Arizona Tea. *Id.* at p. 4. Consequently, Plaintiff seeks to recover damages for negligence. *Id.*

II. Grounds for Removal

A. Complete Diversity of Citizenship Exists Between the Parties and the Amount in Controversy Exceeds \$75,000.00.

9. Plaintiff is a citizen and a resident of Texas. Defendant Target is a citizen and a resident of Minnesota. Thus, the parties are completely diverse. *See* 28 U.S.C. § 1332(a).

10. Plaintiff is seeking damages in excess of \$75,000.00. In particular, Plaintiff's petition seeks "monetary relief over \$1,000,000". *See* Plaintiff's Original Petition at p. 10. Therefore, the amount in controversy exceeds \$75,000.00.

B. Venue is Proper in This Division and in This District.

11. Plaintiff filed this action in Montgomery County, Texas. The Houston Division of the Southern District of Texas encompasses Montgomery County, Texas. Thus, this district and division embrace the place where the state court action is pending. *See* 28 U.S.C. §1441(a).

III. Procedural Requirements for Removal

12. This Notice of Removal is filed within thirty days of the date on which Defendant received the summons and complaint. Thus, this Notice of Removal is timely. *See* 28 U.S.C. § 1446(b).

13. Copies of all processes, pleadings, and orders have been filed separately with this Court. *See* 28 U.S.C. § 1446(a).

14. Pursuant to Local Rule 81 of the Southern District of Texas, the following documents are attached to this Notice of Removal: copy of all processes, attached hereto as Exhibit "A"; all pleadings and orders signed by the Judge attached hereto as Exhibit "B"; an Index of Matters Being Filed, attached hereto as Exhibit "C"; and a list of all Counsel of Record,

including addresses, telephone numbers and parties represented is attached hereto as Exhibit “D”.

15. A copy of this Notice of Removal will be filed with the Montgomery County District Clerk’s office promptly and will be served on Plaintiff promptly. *See* 28 U.S.C. § 1446(d); *see also Nixon v. Wheatley*, 368 F. Supp. 2d 635, 640 (E.D. Tex. 2005) (Crone, J).

16. The filing fee has been paid to the Clerk.

IV. Prayer

17. WHEREFORE, PREMISES CONSIDERED, Defendant Target Corporation prays that the above-styled action now pending in the 284th Judicial District Court of Montgomery County, Texas be removed from there to this Honorable Court.

18. This Notice of Removal is filed subject to and without waiver of any defenses or objections to Plaintiff’s Original Petition as allowed by the Federal Rules of Civil Procedure or by any applicable law.

Respectfully submitted,

GERMER PLLC

By: /s/ Valerie Ly w/ permission
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been duly sent via CM/ECF on April 10, 2019 to all counsel of record, as follows:

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